

6 Official Opinions of the Compliance Board 53 (2008)

ADMINISTRATIVE FUNCTION EXCLUSION – SELECTION OF CLERK-TREASURER HELD TO BE WITHIN EXCLUSION GIVEN PROVISIONS OF MUNICIPAL CHARTER

October 24, 2008

Anita S. Williams

The Open Meetings Compliance Board has considered your complaint alleging that the Mayor and Council of the Town of Betterton violated the Open Meetings Act in connection with meetings held on June 18 and 19, 2008. Specifically, you alleged that the Town governing body failed to give notice of the meetings. And, you alleged that the Council, in conducting the closed meetings on these dates and, and a closed session on June 10, failed to comply with certain procedural requirements of the Act for closed sessions. For the reasons explained below, we conclude that no violation occurred.

I

Complaint and Response

Your complaint indicated that you believe the Mayor and Council of the Town of Betterton violated the Open Meetings Act when the body conducted closed meetings on June 18 and 19, 2008. You alleged that no notice of either session was provided in the county newspaper or posted on the door of Town Hall or on the outside bulleting board. Nor were the meetings announced during the regular meeting of the Town governing body on June 10, 2008. You indicated that a “Business Administrative Meeting” was held and the municipal attorney had advised the Mayor that notice was not required. Furthermore, you alleged that the Town governing body failed to first vote during a public session to close the meetings as required under the Act and failed to produce a written statement, a matter of public record, documenting the justification for closure during these sessions and during an earlier session, June 10.¹

¹ While your complaint objected to the failure to “read the written statement” for sessions on June 10, 18, and 19, the Act does not require that the statement be publicly read. However, assuming the Open Meetings Act applied, a written statement must be completed in advance of the closed session and retained as a public record for at least one

In a timely response on behalf of the Town governing body, Thomas Yeager, Esquire, acknowledged that notice was not given in advance of the June 18 or 19 meetings; nor was there a vote to close the session or completion of closing statements. However, the position of the Town governing body is that these meetings involved an administrative function; thus, the Open Meetings Act did not apply. The response noted that the sessions these two days involved interviews of candidates for the position of Clerk-Treasurer. In advance of these sessions, Mr. Yeager had advised the Mayor that these sessions would involve an administrative function outside the scope of the Act. The response cited the municipal charter which provides that, “[t]here shall be a Clerk-Treasurer appointed by the Council...”, Betterton Town Charter § 301, 1 *Municipal Charters of Maryland* Ch. 10, as well as a municipal ordinance that charges the Mayor, with the approval of a majority of the Council, with responsibility for the appointment. Code of Ordinances of the Town of Betterton, § 2-101. The response also cited the Town’s personnel rules, § IV, which provide, in pertinent part, that, “[t]he Mayor and Council is responsible for the recruitment, screening, selection and employment assignment of staff.” The response argued that it is clear that the members of the Council was not engaged in any other function under the Act and, in conducting interviews, were carrying out existing law and policy. Because the activities involved an administrative function, the Open Meetings Act did not apply.

As to the closed session on June 10, 2008, the response noted that the Town governing body properly closed the meeting under § 10-508(a)(1)² to evaluate the resumes of individuals who had applied for the position of Clerk-Treasurer and determine which candidates would be interviewed. A statement prepared in closing the meeting and reflecting the vote was included with the response. Although the meeting was closed in accordance with the Act, the response noted that the screening of applicants’ resumes was also an administrative function outside the scope of the Act. Although the response argued that the Act did not apply to the sessions identified in the complaint, it also reviewed the procedural requirements under the Open Meetings Act for closing a meeting and noted that there is no obligation that the statement be “read” as suggested in the complaint.

year. We interpret this part of the complaint as an allegation that the written statement was never prepared.

² All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

II

Analysis

Subject to limited exceptions not applicable here, when a public body is carrying out an administrative function under the Open Meetings Act, none of the Act's substantive or procedural requirements apply. § 10-503(a)(1)(i). In an extensive body of opinions applying the definition of an administrative function, § 10-502(b), we have adopted a two-part analysis. We first inquire whether the topic of discussion falls within the definition of any alternative defined function. If so, our analysis ends because, by definition, it could not qualify as an administrative function. If the topic does not fall under an alternative defined function, we then consider whether the public body was involved in the "administration of" an existing law, rule, or regulation. If not, the topic does not qualify as an administrative function. *See, e.g., 6 OMCB Opinions 23, 25-26 (2008).*

Under the municipal charter, the Mayor and four Council members constitute the Town's governing body and the Mayor is treated as a member of the Council. *See* Town Charter, §§ 201 and 202. While the Mayor is also the chief executive officer of the Town, *Id.*, § 203.a, according to the municipal charter, it is the Council that is charged with the appointment of a Clerk-Treasurer. In selecting a new Clerk-Treasurer, the Council's action did not fall under any alternative function. The Council was carrying out its responsibility pursuant to the charter. Thus, its action clearly qualifies as an administrative function under the Act. *Compare 1 OMCB Opinions 123, 125* (school board's selection of interim superintendent an executive (now administrative) function under the Act).³ Thus, none of the Open Meetings Act's requirements, including advance notice of a meeting or procedures required in closing a meeting under the Act, applied.

During the June 10 meeting when the Council met in a closed session to consider which candidates would merit an interview, the Council closed the meeting in accordance with the Open Meetings Act for consideration of a personnel matter. However, in response to your complaint, the Council noted that this session also qualified as a administrative session. It appears that this session was part of a

³ Ironically, the ordinance submitted with the response suggests that the Mayor is vested with authority to make the appointment, subject to approval of the majority of the Council. If that was the law, the Council's role would be deemed an legislative function in the parlance of the Open Meetings Act in that the Council would be approving the appointment of the Mayor. § 10-502(f)(2). However, to the extent the charter provisions and municipal ordinance conflict, it is a fundamental principle of municipal law that the charter, frequently equated to a local constitution, would control. *See 5 McQuillin, The Law of Municipal Corporations* § 15:17 (3rd ed. rev. 2004). In any event, the Council appears to have followed to procedure set forth in the charter as well as the Town's Personnel Rules in that the Council itself was involved in the selection process.

regular meeting of the Council. If the Council had invoked the administrative function exemption to hold a closed meeting during the course of a meeting subject to the Act, certain disclosure requirements in subsequent publicly-available minutes would have applied. § 10-503(c).⁴ Based on the record before us, it is unclear whether the disclosure required subsequent to a closed session was made. This issue was not raised in the complaint, and therefore, was not addressed in the response. However, in closing the meeting, the Council nevertheless acted in accordance with the Act and it is clear that the required procedures in advance of the closed session were followed. And, as the Council points out in its response, there is no requirement that a closing statement prepared under the Act be publicly read.

III

Conclusion

We find that, when the Council met on June 18 and 19, 2008, to interview candidates for the position of Clerk-Treasurer, the Council was engaged in an administrative function; thus, the Open Meetings Act did not apply. Furthermore, in closing a meeting on June 10 to consider which candidates to interview, the Council complied with the procedural requirements of the Act.

OPEN MEETINGS COMPLIANCE BOARD

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⁴ This provision reads:

If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body's next meeting shall include:

- (1) a statement of the date, time, place, and persons present at the administrative function meeting; and
- (2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.